

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SANDRA K. KRAUSE,

Plaintiff,

vs.

NEVADA MUTUAL INSURANCE CO., *et al.*,

Defendants.

Case No. 2:12-cv-00342-JCM-CWH

**ORDER**

This matter is before the Court on Plaintiff's Motion to Compel (#85), filed May 31, 2013, and Defendants' Response (#102), filed June 17, 2013. Plaintiff did not file a reply.

**BACKGROUND**

Both the Court and the parties are familiar with the procedural and factual background of this case. Plaintiff has alleged (1) gender discrimination in violation of 42 U.S.C. § 2000e *et seq.*, (2) gender discrimination in violation of Nevada Revised Statute ("NRS") 613.310 *et seq.*, and (3) retaliation.<sup>1</sup> The only remaining defendants are Nevada Mutual Insurance Company ("NMIC") and Trean Corporation ("Trean"). The motions under consideration have been pending since before discovery closed and prior to the filing of Defendants' motion for summary judgment. Generally, a timely motion to compel should be considered before consideration of a summary judgment motion. *See Haney v. Nelson*, 476 Fed. Appx. 147 (9th Cir. 2012) (citing *Garrett v City of San Francisco*, 818 F.2d 1515, 1518 (9th Cir. 1987)).

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<sup>1</sup> The following claims have been dismissed: (1) Plaintiff's claim for intentional infliction of emotional distress, (2) Plaintiff's claim of constructive discharge, (3) Plaintiff's claim for negligent hiring, supervision and retention, (4) Plaintiff's claim for tortious interference with employment relationship, and (5) Plaintiff's claim for breach of the covenant of good faith and fair dealing. All claims against Mr. Andrew O'Brien and Roe and Doe defendants have been dismissed.

1                   **1. Plaintiff's Motion to Compel (#85)**

2                   By way of this motion, Plaintiff seeks an order compelling the production of the entire  
3 content of her email account with Defendant Trean for 2008 through March of 2011. She also seeks  
4 sanctions for spoliation of evidence. The motion stems from two interrelated Rule 34 requests for  
5 production. The first Rule 34 request was propounded on or around August 9, 2012, and requested  
6 as follows:

7                   **Request for Production No. 42: Please produce the contents of the laptop**  
8 **computer Sandra Krause used during her employment and then turned into**  
9 **the Nevada Mutual office upon request and the termination of her consulting**  
10 **arrangement in March, 2011.**

11                   **Response: Objection. This request is vague, overly broad, and not**  
12 **reasonably calculated to lead to the discovery of admissible evidence.**  
13 **Subject to and without waiving said objections, see relevant**  
14 **documents [previously produced]. Upon Sandra Krause's**  
15 **termination of her consulting arrangement in March of 2011, her**  
16 **email box was preserved. Due to the extremely poor condition of**  
17 **Sandra Krause's laptop computer, it was removed from TREAN's**  
18 **inventory and the hard-drive of her laptop computer was wiped clean**  
19 **before being sent to a recycling company. Upon information and**  
20 **belief, there are no records related to the contents of the laptop**  
21 **computer at the time Sandra Krause turned in the laptop computer**  
22 **other than the email box and the electronic documents that she had**  
23 **filed within TREAN's server.<sup>2</sup>**

24                   The second Rule 34 request was set forth in Plaintiff's fourteenth set of requests for production,  
25 which was propounded on or around March 1, 2013, and requested as follows:

26                   **Request for Production No. 101: Please produce a copy of the contents of Ms.**  
27 **Krause's IN Box and Sent Box on the TREAN email system for the years**  
28 **2008, 2009 and 2010 and then the time period of January-March 2011.**

**Response: Objection. This request is overly broad, vague, compound,**  
**unduly burdensome, not limited in scope, and seeks the disclosure of**  
**attorney/client privileged communication and/or attorney work**

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<sup>2</sup> This Rule 34 request was propounded on or around August 9, 2012, as part of Plaintiff's fourth set of requests for production. See Ex. 1 attached to Pl.'s Mot. (#85). The response was served on or around September 11, 2012. Ex. 2. Plaintiff's requests for production included a general instructions and definitions sections which broadly defined "documents" to include emails and text messages. Ex. 1. Defendants' response contained "general objections," which included: (1) objection to production attorney work product, attorney-client communications, and privileged information and (2) objection to production beyond that required by the Minnesota Rules of Civil Procedure. Ex. 2.

1                   **product.**<sup>3</sup>

2       As with other discovery motions, it is clear that Plaintiff's counsel engaged in the requisite meet and  
3       confer effort prior to filing this motion.

4               In her motion, Plaintiff asserts that Defendants have engaged in wholesale withholding of  
5       evidence by selectively producing emails they deem relevant while continuously objecting that  
6       review of the emails is overly burdensome. *See* Pl.'s Mot. (#85) at 2:15-22. Plaintiff takes  
7       exception with what she characterizes as improper boilerplate objections; however, boilerplate  
8       objections notwithstanding, she argues that none of Defendants' objections have any merit.  
9       According to Plaintiff, the requests are not vague as they clearly seek production of the contents of  
10      Plaintiff's work laptop and work email account. Plaintiff acknowledges the contents of the laptop  
11      are no longer available, but argues the refinement of the request to her work email inbox and sent  
12      box from 2008 through March 2011 is reasonable in relation to the time she was employed and the  
13      events giving rise to this lawsuit. She further identifies a number of reasons why the emails are  
14      reasonably calculated to lead to admissible evidence, including, but not limited to: (1)  
15      documentation of her discussions and references to raising issues and concerns with her supervisor,  
16      (2) documentation of discussions about her performance and work product, (3) an absence of  
17      documentation calling her job performance into question, and (3) equal access to evidence which  
18      Defendants have reviewed and disclosed in piecemeal fashion. Plaintiff questions the notion that  
19      production of the requested emails is overly burdensome as Defendant Trean has adopted a  
20      paperless system and should not be permitted to claim it is overly burdensome to review and  
21      identify responsive documents within that system. Lastly, Plaintiff argues that Defendants failed to  
22      support their objection based on privilege because they did not make a *prima facie* showing of  
23      privilege or produce a privilege log.

24              In addition to compelling responses, Plaintiff seeks sanctions for spoliation based on the  
25      wiping of the hard drive of her employer-issued laptop. It is not clear the precise sanction Plaintiff

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27              <sup>3</sup> This Rule 34 request was propounded on or around March 1, 2013, as part of Plaintiff's fourteenth set  
28      of requests for production. *See* Ex. 3 attached to Pl.'s Mot. (#85). The response was served on or around April  
4, 2013. Ex. 4.

1 seeks for the alleged spoliation. Plaintiff seeks fees for having to file this motion under both Rule  
2 37(a)(5) and pursuant to the Court's inherent authority.

## 3 **2. Defendants' Response (#102)**

4 Defendants characterize Plaintiff's motion as an untimely fishing expedition. They argue  
5 that the request for the entire email inbox and sent box is cumulative and duplicative because they  
6 have already produced relevant emails in response to other, more specific Rule 34 requests.  
7 Defendants refute the allegation that they have improperly refused discovery, again noting that  
8 substantial production has taken place, including production of documents and information from  
9 Plaintiff's email inbox, in response to other discovery requests. Defendants object to production of  
10 the entire contents of Plaintiff's email inbox and sent box because Plaintiff has failed to demonstrate  
11 a legitimate need for it. This objection is based in large measure on Defendants' assertion that the  
12 request is overbroad because it would necessarily encompass information that has no bearing on  
13 Plaintiff's claims. Defendants further claim that all relevant documents from Plaintiff's email  
14 account have been produced in responses to other requests. Assuming Plaintiff is entitled to the  
15 contents of her email account, Defendants contend that they have not waived any privilege  
16 concerning communications contained therein.

## 17 **DISCUSSION**

### 18 **1. Motion to Compel**

19 The scope of discovery under Federal Rule of Civil Procedure 26(b) is broad: "Parties may  
20 obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or  
21 defense." Fed. R. Civ. P. 26(b)(1). "Relevant information need not be admissible at trial if the  
22 discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* As  
23 the Supreme Court reiterated in *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978), relevance  
24 is "construed broadly to encompass any matter that bears on, or that reasonably could lead to other  
25 matter that could bear on, any issue that is or may be in the case." 437 U.S. at 351 (citing *Hickman*  
26 *v. Taylor*, 329 U.S. 495, 501 (1947)). Even so, the scope of discovery is not without limits. The  
27 scope of discovery is limited to information that is relevant to a claim or defense in the lawsuit. *See*  
28 *Adv. Comm. Notes to 2000 Amendment to Rule 26(b)(1)* ("The rule change signals to the court that

1 it has authority to confine discovery to the claims and defenses asserted in the pleadings, and signals  
 2 to the parties that they have no entitlement to discovery to develop new claims or defenses that are  
 3 not already identified in the pleadings.”). Though the line of demarcation between what is relevant  
 4 and what is not is difficult to define with precision, courts must regulate the breadth of sweeping or  
 5 contentious discovery. As has been previously and aptly stated, “[w]hile the standard of relevancy  
 6 [in discovery] is a liberal one, it is not so liberal as to allow a party to ‘roam in the shadow zones of  
 7 relevance and to explore matter which does not presently appear germane on the theory that it might  
 8 conceivably become so.’” *Henderson v. Holiday CVS, LLC*, 269 F.R.D. 682, 686 (S.D. Fla 2010)  
 9 (citing *Food Lion, Inc. v. United Food & Commercial Workers Intern. Union*, 103 F.3d 1007, 1012-  
 10 13 (C.A.D.C. 1997)).

11 A motion to compel may be brought where responses to Rule 34 requests for production are  
 12 insufficient. *See* Fed. R. Civ. P. 37(a)(3)(B)(iv). The party seeking to compel discovery has the  
 13 initial burden of establishing that a request satisfies the relevancy requirements of Rule 26(b)(1).  
 14 *Hinkley v. Vail*, 2013 WL 2444214 (W.D. Wa.), order *rescinded in part* by, 2013 WL 3852984. It is  
 15 not necessary for a moving party to make a *prima facie* case to justify discovery. When the  
 16 discovery sought appears relevant on its face, “[t]he party resisting discovery bears the burden of  
 17 establishing lack of relevance by demonstrating that the requested discovery either does not come  
 18 within the broad scope of relevance or is of such marginal relevance that the potential harm  
 19 occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure.”  
 20 *Pulsecard, Inc. v. Discover Card Services, Inc.*, 168 F.R.D. 295, 309 (D. Kan. 1996) (citation  
 21 omitted). “When the relevancy is not apparent, it is the burden of the party seeking discovery to  
 22 show the relevancy of the request.” *Id* (citations omitted); *see also Dolfo v. Bank of America, N.A.*,  
 23 2013 WL 1316705 (S.D. Cal.) (“Once the moving party establishes that the information is  
 24 [relevant], the burden shifts to the opposing party to specify how the discovery request is irrelevant,  
 25 overly broad, burdensome, or oppressive.”) (citations omitted).

26 At issue are two requests for production. The first, request for production No. 42 (see  
 27 *supra*), sought production of the contents of the laptop computer used by Plaintiff during her  
 28 employment and turned over to Nevada Mutual upon termination of Plaintiff’s consulting contract.

1 Defendants adequately responded to this request by representing that, upon return, the laptop's hard  
2 drive was wiped and the laptop itself sent to a recycling company. Defendants preserved the  
3 contents of Plaintiff's email account, which resides on a separate server. Defendants also preserved  
4 all electronic documents created that had been saved on Defendant Trean's server. It appears, the  
5 primary relief sought relating to this response is Plaintiff's request for spoliation sanctions,  
6 discussed *infra*.

7 The second, request for production no. 101, seeks production of the entire contents of  
8 Plaintiff's email in box and sent box on Defendant Trean's email server for the years 2008 through  
9 March 2011. Defendants lodged several objections to the request, but did not produce any  
10 documents in response.<sup>4</sup> Before addressing the merits of Defendants' objections, the Court first  
11 addresses the argument that the motion is untimely. The motion was filed after the close of  
12 discovery but before the expiration of the dispositive motion deadline. While neither the Federal  
13 Rules, Local Rules, nor Scheduling Order establishes a specific deadline for filing discovery  
14 motions, it has long been the policy in this District that, absent unusual circumstances, discovery  
15 motions should be filed before the scheduled date for filing dispositive motions. *See e.g. Gault v.*  
16 *Nabisco Biscuit Co.*, 184 F.R.D. 620 (D. Nev.); *see also Argarwal*, 2013 WL 211093 (D. Nev.);  
17 *Thurston v. City of North Las Vegas*, 2011 WL 3841110 (D. Nev.); *Hall v. Schumaker*, 2011 WL  
18 4458845 (D. Nev.). Under the standard established in *Gault*, the undersigned finds that the motion  
19 was timely.

20 It appears that, throughout the meet and confer process, the parties discussed the relevance  
21 of the request. However, Defendants did not raise a relevance objection in their response to the  
22 request. Even assuming they had, the relevance hurdle is easily cleared. Throughout the briefing,  
23 Defendants expressly acknowledge that the contents of Plaintiff's email in box and sent box  
24 contains relevant information. Indeed, in response to several other discovery requests, emails from  
25 the account in question have been produced. The Court rejects Defendants attempts to narrowly  
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27 <sup>4</sup> Part of Defendants' argument in opposition to this motion is that documents produced in response to  
28 other requests included relevant documents from Plaintiff's email in box. It appears, however, that no further  
documents were produced specifically in response to the request at issue here.

1 construe relevance to just those specific rationales offered by Plaintiff in her motion. Plaintiff is  
2 permitted to obtain discovery regarding all matter, not otherwise protected, that is relevant to the  
3 claims and defenses in the case. It is hardly noteworthy that Plaintiff's own email account could  
4 contain relevant information, especially in a case dealing with the sending of pornographic images  
5 and material via email.

6 Throughout the course of the meet and confer process, it is clear that the primary objection  
7 that the request was overly broad and created an undue burden on Defendants. The objections  
8 served in response are not ideal. They lack a measure of specificity and explanation called for in  
9 Rule 34, which requires that when a party states an objection to a request it should include the  
10 reasons for the objection. Fed. R. Civ. P. 34(b)(2)(B); *see also Holt v. Nichols*, 2014 WL 250340  
11 (E.D. Cal.) (“[Rule 34] requires that a party responding to a request for production must either state  
12 that inspection of documents and related activities will be permitted as requested, or state an  
13 objection, including the specifics of the objection and how that objection relates to the documents  
14 being demanded.”). “The party opposing discovery has the burden of showing that discovery should  
15 not be allowed, and of clarifying, explaining and supporting its objections.” *See DirecTV, Inc. v.*  
16 *Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002). Even in the face of less than ideal responses or  
17 requests, the Court is vested with broad authority to manage discovery and may exercise that  
18 discretion to reach the merits of a discovery dispute despite a party's failure to meet its burden.  
19 *Franklin v. United States*, 2013 WL 1962678 \*4 (E.D. Cal.); *Marti v. Baires*, 2012 WL 2029720 \*3  
20 (E.D. Cal); *Hunt v. County of Orange*, 672 F.3d 606, 616 (9th Cir. 2012) (“District courts have  
21 broad discretion to manage discovery and to control the course of litigation . . .”). After review,  
22 the undersigned has determined to address the merits of Defendants' overbreadth objection despite  
23 the failure to include reasons and specifics in the original objection. It is clear from review of the  
24 briefing that the parties had prolonged and extensive discussion regarding the breadth of the request  
25 during the lengthy meet and confer process.

26 Rule 34 requires the moving party to “describe with reasonable particularity each item or  
27 category of items to be inspected.” Fed. R. Civ. P. 34(b)(1)(A). The test regarding “particularity” is  
28 relative and is viewed on a case by case basis. *8B Wright, Miller & Marcus, Federal Practice and*



1 *Procedure* § 2211 (3d Ed. 2010). It necessarily turns on whether the movant’s degree of knowledge  
 2 would be such that she can designate, identify and enumerate with precision the documents to be  
 3 produced. *Id.* The ideal, however, is not always attainable and Rule 34 does not require the  
 4 impossible. “Even a generalized designation should be sufficient when the party seeking discovery  
 5 cannot give a more particular description and the party from whom discovery is sought will have no  
 6 difficulty in understanding what is wanted.” *Id.* The Court has little difficulty in finding that a  
 7 request for email from a specified email account spanning a specific time period can satisfy the  
 8 particularity requirement. However, in this instance, the Court finds that the request is overbroad as  
 9 Plaintiff made no attempt to refine, limit, or modify what is an otherwise blanket request for the  
 10 entirety of the email account in question.

11 In reaching this conclusion, the undersigned finds the reasoning set forth in *Dauska v. Green*  
 12 *Bay Packaging Inc.*, 291 F.R.D. 251 (E.D. Wisc. 2013) persuasive and instructive. In *Dauska*, the  
 13 court was addressing a series of Rule 34 requests. In doing so, it determined that certain requests  
 14 were over broad because they used language so broad that it was impossible to determine what  
 15 amongst numerous documents fell within the scope of the requests. *Dauska*, 291 F.R.D. at 261. In  
 16 addressing overbreadth, the court stated: “A discovery request is overly broad and unduly  
 17 burdensome on its face if it uses an omnibus term such as ‘relating to,’ ‘pertaining to,’ or  
 18 ‘concerning’ to modify a general category or broad range of documents or information.” *Id.*  
 19 (citations omitted). The court went on to state:

20 Requests which are worded too broadly or are too all inclusive of a general  
 21 topic function like a giant broom, sweeping everything in their path, useful or  
 22 not. They require the respondent either to guess or move through mental  
 23 gymnastics which are unreasonably time-consuming and burdensome to  
 24 determine which of many pieces of paper may conceivably contain some  
 25 detail, either obvious or hidden, within the scope of the request.

26 *Id.* (citations omitted). The *Dauska* court found requests seeking “all documents and emails that  
 27 refer or relate to” the allegations or defenses in the case impermissibly broad because response  
 28 would require compilation and review of “a vast array of material having no possible relevance to  
 [the] lawsuit.” *Id.* at 262. To require compliance under such circumstances would be unreasonably  
 time-consuming, burdensome and unfair. The *Dauska* court determined that requests seeking



1 production of documents and emails relating to a particular issue or claim were not overbroad. For  
2 example, the request to produce all documents that “refer[red] or relate[d] to [Defendant’s] decision  
3 to eliminate Plaintiff’s position” because the category of documents to be searched was clear and  
4 there was no mystery as to what documents were sought. *Id.*

5 Here, Plaintiff request is unlimited and is not sufficiently modified or tailored to apprise  
6 Defendants what is being sought. Plaintiff simply requests the entirety of the email in box and sent  
7 box for the email account for the years 2008-March 2011 without limitation. The request is  
8 unconnected to any particular or specific claim or defense that is part of this case. Functionally, this  
9 is the same as requesting that the reviewing party scour the voluminous records contained within the  
10 general category identified for any and all documents that might be relevant to any and all claims or  
11 defenses in a case. Compliance would, quite clearly, operate like a giant broom sweeping up  
12 everything in its path regardless of relevance or usefulness. It would require Defendants to engage  
13 in the mental gymnastics and time-consuming process identified in *Dauska* to determine which of  
14 many pieces of information may contain some detail, obvious or hidden, that is within the broad  
15 parameters of all claims and defenses. The email account will, unquestionably, contain untold  
16 numbers of entirely irrelevant documents and information. Plaintiff concedes she worked in a  
17 paperless office, meaning virtually everything she worked on during the time period identified  
18 would be subject to disclosure. It is absurd, under the circumstances, to expect Defendant to gather  
19 and review this unlimited request. It is equally absurd to believe that Plaintiff should be given  
20 unfettered access to every piece of information within or attached to her email account. The Court  
21 will not require any further response to this request as compliance would be unreasonably time-  
22 consuming, burdensome, and unfair.<sup>5</sup>

23 The Court further notes that counsel for the parties had significant meet and confer sessions  
24 on this very topic. It is clear from Plaintiff’s counsel’s declaration and exhibits attached to motion  
25 (#85) that Defendants never stated that they would not, or indeed had not, reviewed Plaintiff’s email  
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27 <sup>5</sup> The Court takes exception to Plaintiff’s apparent belief that fairness dictates that she be permitted to  
28 review every document that Defendants have reviewed in order to respond to discovery requests. There is no  
basis for this in the Rules or any law that Plaintiff was able to find and cite to the Court.

1 account for discoverable information. Defendants continually noted that the request for unfettered  
2 access was over broad and created an undue burden. Defendants specifically did not foreclose  
3 further response, asking only that a more specific reference or limitation be provided so that  
4 Defendants could adequately respond. Plaintiff's counsel rejected this imminently reasonable  
5 request and continued to push for unfettered access to the entirety of the email account. Plaintiff's  
6 request, as propounded, is overbroad on its face, and patently so. Having thus determined that a  
7 response is not necessary, the Court need not address the remaining objections.

## 8 **2. Spoliation**

9 There are two sources of authority under which the Court can sanction a party for spoliation  
10 of evidence - its inherent authority or Rule 37. *Leon v. IDX Systems Corp.*, 464 F.3d 951, 958 (9th  
11 Cir.2006). Regardless of whether it is under Rule 37 or its inherent authority, a federal court applies  
12 federal law when addressing issues of spoliation of evidence.<sup>6</sup> *See Glover v. BIC Corp.*, 6 F.3d  
13 1318, 1329 (9th Cir. 1993) (applying federal law when addressing spoliation in diversity litigation).  
14 Here, Plaintiff requests that the Court exercise its inherent authority to enter an order for (1) a  
15 rebuttable presumption or (2) an adverse inference jury instruction.

16 The Court has "inherent discretionary power to make appropriate evidentiary rulings in  
17 response to the destruction or spoliation of relevant evidence." *Glover*, 6 F.3d at 1329. Such broad  
18 power includes permitting an adverse inference from the spoliation of relevant evidence against the  
19 spoliating party. *Id.* The Ninth Circuit has explained that the adverse inference sanction is based on  
20 evidentiary and policy rationales that seek to deter a party who has notice of an item's relevance to  
21 litigation from destroying it. *See Akiona v. United States*, 938 F.2d 158, 161 (9th Cir. 1991). A  
22 finding of bad faith is not a prerequisite for an adverse inference. *See Glover*, 6 F.3d at 1329.

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25 <sup>6</sup> Federal law governs the imposition of spoliation sanctions because that constitutes an evidentiary  
26 matter. *See Glover v. BIC Corp.*, 6 F.3d 1318, 1329 (9th Cir.1993). However, state law is relevant to a  
27 determination of whether spoliation sanctions are warranted if it provides the standard for recovery, for example,  
28 as in slip and fall actions. *See Heath v. Wal-Mart Stores East, LP*, 697 F.Supp.2d 1373, 1377 (N.D. Ga. 2010)  
(finding Defendant's failure to preserve more than eleven minutes prior to the slip and fall did not constitute  
spoliation because the video showed source of spill and fall). State law also provides guidance to federal courts  
in defining spoliation and the relevant factors, such as culpability. *Id.*

1           Spoliation of evidence is defined as “the destruction or significant alteration of evidence, or  
2           the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable  
3           litigation.” *United States v. Kitsap Physicians Service*, 314 F.3d 995, 1001 (9th Cir. 2002).  
4           Therefore, the duty to preserve begins when a party reasonably should have known that the evidence  
5           is relevant to anticipated litigation. *See In re Napster*, 462 F.Supp.2d 1060, 1067 (N.D. Cal. 2006).  
6           Moreover, a spoliation remedy requires some degree of culpability. *Id.* at 1078. The applicable  
7           standard of proof for spoliation appears to be by a preponderance of the evidence. *See LaJocies v.*  
8           *City of North Las Vegas*, 2011 WL 1630331 \*1 (D. Nev.) (citing *In re Napster*, 462 F.Supp.2d at  
9           1072). The party seeking an adverse inference instruction must establish: (1) that the spoliating  
10          party had an obligation to preserve the evidence; (2) that the evidence was destroyed or significantly  
11          altered with a culpable state of mind; and (3) that the evidence was relevant to the other party’s  
12          claim in that a reasonable trier of fact could find that it would support that claim. *Id.* 452 F.Supp.2d  
13          at 1078.

14          Plaintiff’s spoliation request is not clear. At first blush, it does not even appear it is a  
15          request for spoliation sanctions. Plaintiff sets forth a plethora of case law discussing the standards  
16          governing spoliation and the potential sanctions that may attach to spoliating behavior. However,  
17          she then asserts that she is entitled to review, based on her requests for production no. 42 and 101,  
18          discussed *supra*, the entirety of the preserved email account to determine whether any information  
19          has been lost or destroyed. She then suggests that she would be entitled to seek additional sanctions  
20          for spoliation based upon the results of this review. Having determined that the Defendant is not  
21          required to respond to the patently overbroad request for the email account in question, there is no  
22          need to “preserve” the right to pursue spoliation sanctions pending review of the email account.

23          It also appears that Plaintiff is requesting unspecified spoliation sanctions against Defendant  
24          for the alleged destruction of the contents of her laptop, including emails. The record does not  
25          support the conclusion that Defendant altered or otherwise destroyed the contents of Plaintiff’s  
26          laptop. Attached as exhibit A to Defendants’ response (#102) is a declaration which makes clear  
27          that Defendants did not simply destroy the laptop and emails in question. The work email account  
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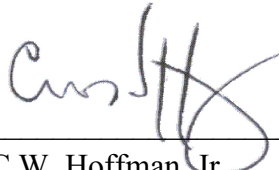
1 Plaintiff seeks was backed up, imaged, and the emails are located on a separate, accessible server.  
2 They never resided on the laptop. Other than Plaintiff's counsel's fervent belief, the claim of  
3 destruction of the emails is entirely unsubstantiated. Moreover, at the time of Plaintiff's  
4 employment, Defendants utilized a paperless claims system which resided on the server of a third-  
5 party vendor pursuant to a licensing agreement. Thus, any work performed on any particular claim  
6 was not destroyed when the laptop was "wiped." The Court will not entertain spoliation sanctions  
7 because Plaintiff's counsel does not believe defense counsel. The declaration attached as exhibit A  
8 to the response (#102) sufficiently demonstrates that no documents saved to the laptop's hard drive  
9 or desktop were destroyed prior to the laptop being "wiped." Even under a lenient preponderance  
10 standard, there is nothing to suggest that relevant documents residing on Plaintiff's laptop were  
11 destroyed or otherwise altered. The request for spoliation sanctions is denied.

12 Based on the foregoing and good cause appearing therefore,

13 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel (#85) is **denied**.

14 DATED: February 6, 2014.

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C.W. Hoffman, Jr.  
United States Magistrate Judge